


IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
**MAR 07 2005**  
  
CLERK

EVELYN A. BLACKMOON, et al.,

Plaintiffs,

v.

CHARLES MIX COUNTY, et al.,

Defendants.

Case No. 4:05-CV-04017-LLP

PLAINTIFFS' STATEMENT OF UNDISPUTED MATERIAL FACTS

1. This Court has original jurisdiction over this case pursuant to Article III of the United States Constitution and 28 U.S.C. §§ 1331 and 1343(a)(3) & (4), and 2201. See Complaint, filed January 27, 2005 (doc. no. 1), ¶ 6; Answer, filed February 11, 2005 (doc. no. 12), ¶ 2.

2. This suit is authorized by 42 U.S.C. §§ 1973j(f) & 1983. See Complaint ¶ 7; Answer ¶ 2.

3. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202. See Complaint ¶ 8; Answer ¶ 2.

4. Venue is proper in the District of South Dakota pursuant to 28 U.S.C. § 1391(b). See Complaint ¶ 9; Answer ¶ 2.

5. Plaintiff Evelyn A. Blackmoon is a Native American, a qualified elector and a resident of Charles Mix County, South Dakota. She lives in commissioner district 2. See Exhibit A (Declaration of Evelyn Blackmoon).

6. Plaintiff Robert W. Cournoyer is a Native American, a qualified elector and a resident of Charles Mix County, South Dakota. He lives in commissioner district 1. See Exhibit B (Declaration of Robert Cournoyer).

7. Plaintiff Sharon Drapeau is a Native American, a qualified elector and a resident of Charles Mix County, South Dakota. She lives in commissioner district 2. See Exhibit C (Declaration of Sharon Drapeau).

8. Plaintiff Alan Flying Hawk is a Native American, a qualified elector and a resident of Charles Mix County, South Dakota. He lives in commissioner district 1. See Exhibit D (Declaration of Alan Flying Hawk).

9. Defendant Charles Mix County is a political subdivision of the state of South Dakota and is capable of suing and being sued in its own name. See Complaint ¶ 14; Answer ¶ 2.

10. Defendants Carrol Allen, Keith Mushitz, and Herman Peters are members of the Charles Mix County Commission and are jointly responsible for redrawing the boundaries of commissioner districts in Charles Mix County following the decennial census. They are sued in their official capacities only. See Complaint ¶ 15; Answer ¶ 2.

11. Defendant Norman Cihak is the County Auditor of Charles Mix County and is primarily responsible for the conduct of county

elections. He is sued in his official capacity only. See Complaint ¶ 16; Answer ¶ 2.

12. The defendants, both personally and through the conduct of their agents, servants and employees, were and are acting under color of state law at all times relevant to this action. See Complaint ¶ 17; Answer ¶ 2.

13. According to the 2000 Census, the total population of Charles Mix County is 9350 persons. See Exhibit E (Declaration of William S. Cooper).

14. According to the 2000 Census, the total population of District 1 is 3443 persons. See id.

15. According to the 2000 Census, the total population of District 2 is 3057 persons. See id.

16. According to the 2000 Census, the total population of District 3 is 2850 persons. See id.

17. The ideal size for a county commissioner district in Charles Mix County is  $9350/3$ , or 3117 persons. See id.


18. District 1 is overpopulated by 326 persons, or 10.46%. See id.

19. District 2 is underpopulated by 60 persons, or 1.92%. District 3 is underpopulated by 267 persons, or 8.57%. See id.

20. The total deviation of the existing county commissioner districts in Charles Mix County is 593 persons, or 19.02%. See id.

Respectfully submitted,

BRYAN SELLS  
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ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that I have served this pleading by hand to  
the following attorney of record:

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This 4<sup>th</sup> day of March, 2005, at Rapid City, South Dakota.

  
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